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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,091	10/17/2003	Sudhin Datta	2002B141/2	9100

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EXAMINER

NUTTER, NATHAN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/688,091

Applicant(s)

DATTA ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0704.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-45 of U.S. Patent No. 6,642,316. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent recite all three components, each having physical characteristics, e.g. the FPC (designated herein as (a)) may be isotactic polypropylene having a melting point above 110°C and heat of fusion greater than 75 J/g, the SPC (designated herein as (b)) may have ethylene/ $\alpha$ -olefin present as less or equal to 10 weight % of the blend and may have an additional polymer having a heat of fusion of less than 75 J/g. Only the density of the contemplated dispersed phase is not recited. The reference is deemed to include any and all ranges of densities for the SPC.

Claims 1-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,342,565. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent recites and claims the particular polymers employed herein as a dispersed phase and a continuous phase, except that the reference fails to claim any particular range for the densities of the second polymer component, as herein claimed. The employment of the range recited herein is deemed to be inherently within the scope of the reference.

Claims 1-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-58 of copending Application No. 10/856,545. Although the conflicting claims are not identical, they are not patentably distinct from each other because the various properties of each of the recited polymers in the copending application may include those recited and claimed herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-58 of copending Application No. 10/896,549. Although the conflicting claims are not identical, they are not patentably distinct from each other because the various properties of each of the recited polymers in the copending application may include those recited and

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claimed herein, and the claims of the copending application would embrace the heterophase composition recited herein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Spenadel, newly cited.

Note column 6 (lines 14-43) for the claimed composition.

Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Kaufman et al, newly cited.

Note column 2 (lines 17-51) for the claimed invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al ('316), cited above.

The reference to Datta et al teaches the production of a continuous phase of polypropylene having a melting point of 110°C and a heat of fusion greater than 75 J/g, having dispersed therein a second polymer component that may have ethylene/ $\alpha$ -olefin present as less or equal to 10 weight % of the blend and may, further, have an additional polymer having a heat of fusion of less than 75 J/g. Note column 1 (lines 40-51) for the employment of isotactic polypropylene as the FPC. Further, note column 4 (lines 20-43) for the FPC. Note column 4 (line 44) to column 5 (line 13), column 5 (line 66) to column 6 (line 43) and column 8 (lines 53 et seq) for the SPC. The reference is silent with respect to the densities of the SPC. This feature would be inherent in the SPC polymers since they are within the scope of the invention as herein disclosed. As such, the recitations of the instant claims are deemed to be obvious over the teachings of the reference to Datta et al.

Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al, cited above.

The reference to Cheng et al teaches the production of a continuous phase of polypropylene having a melting point of 110°C and a heat of fusion greater than 60 J/g, having dispersed therein a second polymer component that may have ethylene/ $\alpha$ -olefin present as less or equal to 10 weight % of the blend and may, further, have an

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additional polymer having a heat of fusion of less than 45 J/g. Note column 3 (lines 12-19) for the employment of isotactic polypropylene as the FPC. Further, note column 4 (lines 33-53) for the copolymer designated herein as a compatibilizing agent. Note column 4 (lines 54-67) for the SPC (designated herein as (a)). The FPC is taught at column 5 (lines 44 et seq), which at column 7 (lines 16-43) may include the polymer designated herein as polymer (b)., having a melting point of less than 115°C. The reference is silent with respect to the densities of the SPC. This feature would be inherent in the SPC polymers since they are within the scope of the invention as herein disclosed. As such, the recitations of the instant claims are deemed to be obvious over the teachings of the reference to Cheng et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Nathan M. Nutter", written in a cursive style.

Nathan M. Nutter  
Primary Examiner  
Art Unit 1711

nmn

21 March 2005